

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

DANIEL BANAKUS, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	<b>JURY TRIAL DEMANDED</b>
	)	
UNITED CONTINENTAL HOLDINGS,	)	
INC., and UNITED AIRLINES, INC.,	)	
	)	
Defendants.	)	

**CLASS ACTION COMPLAINT**

Plaintiff Daniel Banakus (“Banakus” or “Plaintiff”) brings this action against Defendants United Continental Holdings, Inc., f/k/a UAL Corporation, and United Airlines, Inc., d/b/a United Airlines (collectively, “United”), on behalf of himself and all others similarly situated, and complains and alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**I. NATURE OF THE ACTION**

1. For years, United has boasted of the “tremendous travel and mileage earning possibilities and benefits” provided by its frequent flyer program.<sup>1</sup> Indeed, United’s website proclaims that that its frequent flyer program provides “the best combination of services and rewards for frequent travelers.”<sup>2</sup> Chief among these rewards were the exclusive benefits that United promised to its “Premier Members.”

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<sup>1</sup> See MileagePlus Enrollment, *available at* <http://www.united.com/web/en-US/apps/account/enroll.aspx> (last visited July 24, 2012).

<sup>2</sup> *Id.*

2. In order to become a Premier Member, a customer first had to accumulate at least 25,000 miles on United flights— roughly the circumference of the Earth — in a calendar year. In exchange, United promised to provide Premier Members with certain exclusive rewards the *following year*, such as free seating upgrades and two free checked bags on each flight.

3. On March 3, 2012, United launched a new frequent flyer program that drastically reduced and devalued the benefits for its Premier Members. Importantly, however, United has refused to honor the benefits that Premier Members had *already earned* in the preceding calendar year — thus breaching its contracts with those members.

4. Accordingly, Plaintiff brings this class action against United for breach of contract on behalf of a nationwide class.

## **II. JURISDICTION AND VENUE**

5. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiff's claims and the claims of the other Class members exceed \$5,000,000 exclusive of interest and costs, and there are numerous class members who are citizens of states other than United's states of citizenship.

6. This Court has personal jurisdiction over United under the Illinois long-arm statute, 735 ILCS 5/2-209, because: (1) a substantial portion of the wrongdoing alleged in this Complaint took place in and/or was directed toward the State of Illinois; (2) this action arises from United's transaction of business in Illinois; and (3) this action arises from United's making or performance of a contract substantially connected with Illinois.

7. This Court also has personal jurisdiction over United because it is a corporate resident of the State of Illinois and thus is subject to general jurisdiction therein.

8. Venue is proper in this district pursuant to 28 U.S. C. § 1391(b)(1), (2) and 1391(c) as United is deemed to reside in this judicial district because it is subject to personal

jurisdiction here; and a substantial part of the events and/or omissions giving rise to the claims emanated from activities within this jurisdiction.

### **III. PARTIES**

#### ***Plaintiff***

9. Daniel Banakus is an individual and a citizen of the State of California.

#### ***Defendants***

10. United Continental Holdings, Inc., is a publicly traded company organized under the laws of Delaware. Its headquarters and principal place of business are located in Chicago, Illinois. Formed after the October 1, 2010 merger between United Airlines and Continental Airlines, United Continental Holdings, Inc. now controls and manages the frequent flier program known as MileagePlus.

11. United Airlines, Inc. is a wholly owned subsidiary of United Continental Holdings, Inc. United Airlines, Inc., is organized under the laws of Delaware and headquartered in Chicago, Illinois. United Airlines, Inc. created and administered “Mileage Plus,” the frequent flier program at issue in this case.

### **IV. FACTUAL BACKGROUND**

#### ***Mileage Plus Membership Tiers***

12. In 1981, United unveiled Mileage Plus, a customer loyalty program designed to reward its best customers. By signing up for Mileage Plus, frequent flyers could receive exclusive benefits and perks in exchange for purchasing tickets on United’s flights.

13. As part of its Mileage Plus program, United established three separate membership “tiers” for Mileage Plus Members: (1) Premier; (2) Premier Executive; and (3) Premier Executive 1K. Per United’s representations, each membership tier provided customers with specific benefits.

14. For instance, United expressly promised to provide Premier Members with free upgrades to Economy Plus seating at the time of booking. Unlike normal coach seating, Economy Plus seats are located towards the front of the plane, and provide passengers with additional legroom. On average, Economy Plus tickets cost an additional \$50-\$150 for each leg of a flight. Thus, a round-trip Economy Plus ticket costs approximately \$100-\$300 more than a standard coach ticket.

15. Moreover, United also expressly represented that Premier Members would receive two free checked bags on each flight. Ordinarily, United charged a baggage fee of \$25 for the first bag, and \$35 for each additional bag. Thus, this benefit amounted to \$60 worth of savings on each United flight.

16. A United customer could only become a Premier Member — and receive the benefits described above — by flying 25,000 qualifying miles with United. Unlike other frequent flyer programs, consumers could not obtain these qualifying miles through credit card purchases, or by travelling on a “partner” airline. Rather, consumers could do so only by purchasing 25,000 miles worth of airfare in a calendar year. And because this qualification was based on the number of miles flown in an entire calendar year, qualifying consumers received their earned benefits the *following* year.

17. Becoming a Premier Member was no small or inexpensive feat. Accumulating 25,000 miles of qualifying flights in a given year is a costly endeavor. By way of example, the average domestic flight within the United States is approximately 1,100 miles. Moreover, the price of an average coach fare is \$300. Based on these figures, a consumer has to spend over \$6,800 just to acquire 25,000 in qualifying miles.

18. United offered the Premier Membership tier — and the attendant benefits — to every customer that belonged to the Mileage Plus program through emails, written correspondence, and the representations on its website.

19. Importantly, these terms were *not* merely gratuities that United could change or modify at any time based on its whims. Rather, they constituted an offer for a unilateral contract supported by bargained-for consideration, which customers could only accept by purchasing 25,000 miles worth of airfare in a particular calendar year. Thus, while United may have reserved the right to change the terms of its Premier program *going forward*, that did *not* give United the right to withhold contractual benefits that had *already been earned*.

20. Accordingly, those customers who became Premier Members by flying 25,000 qualifying miles in 2011 were contractually entitled to receive free Economy Plus seating and two free checked bags on every United flight throughout all of 2012.

### ***United's Breach of Contract***

21. Notwithstanding the millions of dollars it reaped from Premier Members, United failed to honor its end of the bargain.

22. On March 3, 2012, United unveiled its post-merger frequent flier program. The combined program, known as “MileagePlus” (the same name as United’s former frequent flier program, save for the absence of any space between the words), effectively consolidated the frequent flyer programs of United Airlines and Continental Airlines. Under the new MileagePlus program, the membership tier known as Premier was renamed as “Premier Silver Elite.”

23. More importantly, United unilaterally reduced and devalued the benefits provided to Premier Members, who were now known as “Premier Silver Members.”

24. As detailed above, United expressly promised that those customers who became Premier Members by flying 25,000 qualifying miles in 2011 would receive free upgrades to

Economy Plus seating at the time of booking throughout 2012. Under the terms of MileagePlus, however, these newly minted Premier Silver Members could only receive this free upgrade at the time of *check-in* — a task that is all but impossible. As one source explains:

For many members, Economy Plus is seen as a huge plus for the MileagePlus program. Because entry-level elites are the last in line for upgrades, they rarely get upgraded, and often end up in coach. Unlike other airlines without an intermediate section between coach and business class, United has an Economy Plus section and low-level elites could rely, at the least, on up to five extra inches of legroom. But even this perk is endangered and they won't know until check-in whether they'll be seated in Economy Plus or at the back of the plane. Milepoint member Mackieman expressed his disappointment with his comment, "While most of the changes make sense, for me personally, it is a major bummer to see that Silvers lose the ability to select E+ at booking. I'm sure most folks (especially those of a higher status) don't care, but that was the single biggest draw of my loyalty (meager though it may be) to the company."<sup>3</sup>

25. United also expressly promised that those customers who became Premier Members in 2011 were entitled to check two bags for free on each flight. Nevertheless, United reduced this benefit to *one* free checked bag under the terms of MileagePlus.

26. In short, United induced its customers to become Premier Members by promising to provide specifically enumerated benefits in exchange for the purchase of airline tickets. And though United reaped millions of dollars from the customers that acted on those representations, United refused to honor its obligations.

### ***Facts Pertaining to Plaintiff***

27. For over twenty years, Plaintiff Daniel Banakus has been a loyal customer of United and a Mileage Plus member. During this time, Plaintiff chose to fly exclusively on

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<sup>3</sup> *The New United MileagePlus Takes Off*, INSIDEFLYER, November 2011 Issue, available at <http://www.insideflyer.com/articles/article.php?key=7305>.

United — even when rival airlines offered more affordable fares — for the sole purpose of maintaining his status as a Premier Member.

28. In 2011, Plaintiff flew over 25,000 qualifying miles with United, thereby maintaining his status as a Premier Member throughout 2012, as well as the attendant benefits described above.

29. But when Plaintiff's membership tier transformed from Premier to Premier Silver Elite on March 3, 2012, United wrongfully and unjustly stripped away the bargained-for-benefits that he had already earned the preceding year.

## **V. CLASS ACTION ALLEGATIONS**

30. Plaintiff brings Counts I, as set forth below, on behalf of himself and as a class action pursuant to the provisions of Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class defined as:

All persons who reside in the United States and who became Premier Members by flying 25,000 qualifying miles with United in 2011 (the "Class").

Excluded from the Class are United and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Class; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

31. Certification of Plaintiff's claims for classwide treatment is appropriate because Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

32. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. On information and belief, there are thousands of consumers who have been damaged by United's wrongful conduct as alleged herein. The precise number of Class members and their addresses is

presently unknown to Plaintiff, but may be ascertained from United's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

**33. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

- a. Whether United engaged in the conduct as alleged herein;
- b. Whether United's conduct constitutes a breach of contract with Plaintiff and the other members of the Class;
- c. Whether Plaintiff and the other members of the Class are entitled to actual, compensatory, or other forms of damages, and other monetary relief and, if so, in what amount(s).

**34. Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through the uniform misconduct described above and were subject to United's deceptive and misleading conduct.

**35. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class they seek to represent; they have retained counsel competent and experienced in complex commercial and class action litigation; and Plaintiff intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.



36. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**

United has acted or refused to act on grounds generally applicable to Plaintiff and the Class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Class as a whole.

37. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against United, so it would be impracticable for Class members to individually seek redress for United's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**VI. CLAIMS ALLEGED**

**COUNT I**  
**Breach of Contract**

38. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

39. United made an offer to form a contract each time it represented that Mileage Plus members could become Premier Members by flying 25,000 qualifying miles in a given year and

thereby receive: (1) free upgrades to Economy Plus at the time of booking; and (2) two free checked bags on each flight. United's offer was capable of acceptance by performance.

40. When Plaintiff and the other members of the Class flew the requisite 25,000 miles to become Premier Members, they accepted United's offer, and formed a contract. (The contracts between United and each of the members of the Class will be referred to collectively as the "Contract.")

41. The Contract is a valid, enforceable contract supported by consideration.

42. Plaintiff and each of the other members of the Class have satisfied all conditions precedent pursuant to the Contract.

43. United breached the Contract by refusing to provide Plaintiff and the other members of the Class with free upgrades to Economy Plus at the time of booking.

44. United also breached the Contract by only providing Plaintiff and the other members of the Class with only one free checked bag, not two.

45. As a proximate consequence of United's breaches, Plaintiff and each of the members of the Class have suffered a loss of the value of: (1) the upgrades to Economy Plus seating; and (2) one checked bag.

## **VII. JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all claims in this Complaint so triable.

**VIII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and collectively on behalf of the Class, respectfully requests the following relief:

(a) That the Court determine that this action may be maintained as a class action, certify Plaintiff to serve as representative of the Class, and appoint his counsel as Class Counsel;

(b) That United's wrongful conduct alleged herein be adjudged and decreed to constitute breach of contract;

(c) That Plaintiff and each of the members of the Class be awarded damages for United's breach of contract;

(d) That Plaintiffs and each of the other members of the Class recover their costs of suit, including reasonable attorneys' fees and expenses as provided by law; and

(e) That Plaintiff and each of the other members of the Class be granted such other and further relief as the nature of the case may require or as this Court deems just and proper.

Dated: August 8, 2012

Respectfully submitted,

DANIEL BANAKUS, individually and on  
behalf of all others similarly situated

By: 

One of the Attorneys for Plaintiff  
and the Proposed Putative Classes

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